UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CLAUDIO RENE,

                    Plaintiff,

      - against –

31 EAST 21 EXPRESS INC., ET AL.,

                    Defendants.

21-cv-7435 (JGK)

ORDER

JOHN G. KOELTL, District Judge:

    As requested in the plaintiff's July 17, 2023, letter (ECF No. 133), the time for the plaintiff to move for a default judgment against all the defaulting defendants in this case is extended to **August 2, 2023.**

    For substantially the reasons set forth in the plaintiff's June 29, 2023, letter (ECF No. 132), the plaintiff is not required to serve summonses and the second amended complaint on defendants 31 East 21 Express Inc., Best Thai on 8 Corp., Best Thai on Gramercy, RTC 18 Corp., 331 Lexington Restaurant Corp., Express Thai One, Inc., and Lucky Thai Express Inc. (the "Defaulting Corporate Defendants"). None of the Defaulting Corporate Defendants has appeared in this action or timely responded to the original complaint or the first amended complaint, and the second amended complaint did not add new claims against any of the Defaulting Corporate Defendants. See Fed. R. Civ. P. 5(a)(2) ("No service is required on a party who is in default for failing to appear. But a pleading that asserts a new

claim for relief against such a party must be served on that party under Rule 4."); <u>Allstate Ins. Co. v. Yadgarov</u>, No. 11-cv-6187, 2014 WL 860019, at *6 (E.D.N.Y. Mar. 5, 2014) ("For the purposes of FRCP 5(a)(2), a party has failed to appear if it does not appear within the time pr[e]scribed for answering or otherwise responding to the complaint; no entry of default by the clerk is required." (collecting cases)).

Additionally, as previewed in the plaintiff's June 29 letter, the plaintiff promptly should file a notice of dismissal without prejudice of the plaintiff's claims against defendant Andy Yangeksakul. <u>See</u> ECF No. 132 at 1.

The Clerk of Court is respectfully directed to close ECF Nos. 132 and 133.

SO ORDERED.

Dated: **New York, New York**
              July 17, 2023

                                              _____
                                                  John G. Koeltl
                                              United States District Judge

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